

## DEFINITIONS

Accident or Unsafe Practice Testing - Employees involved in on-the-job accidents or who engage in unsafe on-duty or job-related activities that pose a danger to others or the overall operation of the agency may be subject to testing. Based on the circumstances of the accident or unsafe act, the DER may initiate testing when there is:

- 1) Evidence of an unsafe practice.
- 2) Significant damage to property.
- 3) Careless operation of a vehicle.
- 4) Significant injury to persons.
- 5) A pattern of erratic incidents.

Adulterated Specimen - A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration – Alcohol in a volume of breath (shown as grams of alcohol/210 liters of breath) as indicated by an evidential breath test. For enforcement purposes an alcohol concentration of .02 or greater will be considered a positive test result.

Applicant – An individual who has applied for and is tentatively selected for a position that either:

- 1) requires a CDL or
- 2) is a testing designated position.

Breath Alcohol Technician (BAT) – An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing (EBT) device.

Confirmation Test – *In alcohol testing*: a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

*In controlled substance testing*: a second test to identify the presence of a specific drug or metabolite. In order to ensure reliability and accuracy, this test is separate from and uses a different technique and chemical principle than that of the screening test.

Controlled Substance – The meaning assigned by 21 U.S.C. 802 and includes all substances listed on schedules I through V as they may be revised from time to time (21 CFR 1308 and 21 USC 812). In most circumstances, employees will be tested for the following controlled substances: Amphetamines, Cocaine, Marijuana, Opiates, and Phencyclidine (PCP).

Designated Employer Representative (DER) - A management designee who coordinates administration of the CDL program at the local level.

Dilute Specimen – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

Follow-up Testing - Employees required to undergo a counseling or rehabilitation program for illegal drug use as a result of the drug testing program will be placed on a follow-up list where they will be subject to regular, unannounced testing for a period of one(1) year. Such employees will be tested as often as stipulated in the last chance agreement, or, in the alternative, at an increased frequency of six (6) times per year. Employees who complete an authorized drug treatment program who are returned to TDPs or CDL positions will, in addition to the follow-up testing, be returned to the random pools.

Medical Review Officer (MRO) – A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the State's controlled substance testing program. The MRO must have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test, medical history and other relevant biomedical information.

Post-Accident Testing (CDL) – Controlled substance and/or alcohol test administered following an accident. An employee must contact his/her supervisor as soon as possible following the accident. An employee must submit to a Federal DOT controlled substance and alcohol test any time he or she is involved in an accident where:

- 1) a loss of human life is involved; or
- 2) an employee receives a citation for a moving violation arising from the accident that involved:
  - a) injury requiring medical treatment away from the scene; or,
  - b) one or more vehicles having to be towed from the scene.

Pre-Employment Testing – A urine drug screening test is required of any individual who is tentatively selected for a position that either (1) requires a CDL or (2) is a testing designated position.

Random Testing – The State conducts random controlled substance and alcohol testing for employees required to maintain a CDL or assigned to a testing designated position (TDP). Separate pools will be created and maintained for: (1) employees assigned to CDL positions, and (2) employees assigned to testing designated positions. The State submits all eligible employees' names to a random selection system. A statewide computer generated selection process, which eliminates management discretion, is used by the State. The random selection system provides an equal chance for each employee to be selected each time random selection occurs. Random selections will be reasonably spread throughout the year. Random selection by its very nature may result in employees being selected in successive selections more than once per calendar year.

Reasonable Suspicion – Reasonable suspicion shall be deemed to exist when any of the following occurs:

- Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol;
- Abnormal conduct or erratic behavior;
- Arrest or conviction for a drug-related offense; or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
- Information provided by a credible source; or
- Evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard.

Reasonable Suspicion Testing - An employee may be required to submit to drug and/or alcohol testing if there is reasonable suspicion that the employee is using or under the influence of alcohol and/or controlled substances without a prescription.

Return-To-Duty Testing – A return-to-duty test will be required for all employees who used the EASY program or other substance abuse rehabilitation program and/or medical leave to treat a controlled substance and/or alcohol disease. The employee may not return to duty until he/she tests negative for a controlled substance and/or tests below .02 for breath alcohol. An employee may not return to work until an MRO or SAP and the State have determined that the employee is fit for duty. An employee is subject to a return-to-duty test and six (6) follow-up tests in the first twelve months following the driver's return to duty. These six tests are in addition to any random tests.

Split Specimen – A part of the urine specimen that was sent to the first laboratory and retained unopened, which is transported to a second laboratory in the event an employee requests that it be tested following a verified positive, adulterated or substituted test result of the primary specimen.

Substance Abuse Professional (SAP) – A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker or employee assistance professional or an alcohol or drug abuse counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission.

Substituted Specimen - A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Testing Designated Position (TDP) - A position that has been identified by the Agency as one for which pre-employment and random drug and alcohol testing is legally permissible. Positions so identified will be listed in appendices to this policy by each Agency using this designation in accordance with [section F Designating the TDPs]. Post-offer applicants and employees in testing designated positions shall complete and submit a Receipt of Policy form which will be maintained in the employee's personnel file at the Agency location designated for such files.

<b>RESPONSIBILITIES</b>
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Employees are responsible for:

- reporting for duty in a work-ready condition; and
- submitting to drug and/or alcohol testing in appropriate circumstances when required.

Supervisors are responsible for:

- recognizing indications of possible use or influence of drugs and/or alcohol; and
- taking appropriate actions when such indications are recognized.

Agency Heads/Facility Heads are responsible for:

- designating a DER (Designated Employer Representative);
- identifying appropriate TDPs (Testing Designated Positions) in accordance with the criteria established; and
- determining the percentage of TDPs to be randomly tested annually.

Designated Employer Representative (DER) is responsible for:

- maintaining the accuracy of random pools of employees eligible for random drug and/or alcohol testing;
- maintaining confidentiality of testing schedules and results;
- ensuring that appropriate notices are issued to employees; and
- recommending disciplinary actions or predeprivation proceedings when appropriate.

<b>PROCEDURES</b>
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## **A. Types of and Reasons for Testing**

### **Pre-employment Testing**

Applicants and employees who are offered employment in TDPs or positions requiring CDLs will be tested post-offer/pre-employment. Any offer of employment with the State in a testing designated position or a position requiring a CDL is conditioned on the prospective employee testing negative for drugs and alcohol.

Offers of employment to positions that require the incumbent to possess and maintain a CDL shall be made contingent upon the applicant passing a controlled substance test. An applicant shall be rejected if the pre-employment controlled substance test result is not negative, unless he/she can provide a valid medical statement highlighting a health problem as the cause of the test result. An agency hiring a candidate who maintains a CDL must conduct a background check of the employee's previous employer for controlled substance and alcohol test violations. Within thirty (30) days of performing his/her job duties, DOT regulations require that the State obtain, to the extent available, certain controlled substance and alcohol testing records from the employee's previous employers for the previous three (3) years. As a condition of employment, the applicant shall provide the State with written [authorization](#) to obtain such records.

### **Random Testing**

Employees occupying positions requiring CDLs or designated as TDPs are subject to random testing. Separate random pools will be maintained. One pool will be maintained for employees occupying CDL positions, and separate pools by agency will be maintained for employees occupying TDPs.

- The State will test for controlled substances, at a minimum, fifty (50) percent of the average number of employee positions in each calendar year who are required to maintain a CDL or at a rate established by the DOT for the given year.
- The State will test for alcohol, at a minimum, twenty-five (25) percent of the average number of employee positions in each calendar year who are required to maintain a CDL or at a rate established by the DOT for the given year.
- The State will test annually the percentage of TDPs deemed by the affected agency(s) to be necessary to meet the purposes of this policy.

Employees being tested as a result of the random selection process from the CDL random pool shall be tested for the following controlled substances:

- 1) Blood alcohol concentration of 0.02 or higher
- 2) Amphetamines
- 3) Cocaine
- 4) Marijuana

- 5) Opiates
- 6) Phencyclidine (PCP)

Any other substances that may be identified using the same method used to test for controlled substances will not be tested and, if found will not be reported.

### **Accident or Unsafe Practice Testing**

Employees involved in on-the-job accidents or who engage in unsafe on-duty or job-related activities that pose a danger to others or the overall operation of the agency may be subject to testing. Based on the circumstances of the accident or unsafe act, the DER may initiate testing when there is:

- Evidence of an unsafe practice.
- Significant damage to property.
- Careless operation of a vehicle.
- Significant injury to persons.
- A pattern of erratic incidents.

An alcohol test should take place within two (2) hours, but no more than eight (8) hours following an accident or unsafe practice. A controlled substance test must take place within thirty-two (32) hours after the accident or unsafe practice.

### **Post-Accident Testing (CDL)**

An employee occupying a position requiring a CDL will be required to submit to alcohol and/or controlled substance testing if, in the course of performing driving duties, the employee is:

- 1) Involved in an accident resulting in loss of human life; or,
- 2) Receives a citation concerning an accident which requires either:
  - a) medical treatment away from the scene; or,
  - b) a vehicle to be towed from the scene.

An alcohol test should take place within two (2) hours, but no more than eight (8) hours following an accident. A controlled substance test must take place within thirty-two (32) hours after the accident.

An employee shall follow instructions from his/her supervisor or management designee to complete required testing.

In the event that federal, state, or local officials conduct breath, blood or urine tests for the use of alcohol and/or controlled substances following an accident, employees must comply with such requests. The State may request testing documentation from such agencies, and may ask the employee to sign a release allowing the State to obtain the test results.

In the event an employee is so seriously injured that he/she cannot provide a sample of urine, breath or saliva at the time of the accident; the employee must provide the necessary authorization as soon as possible so the State may obtain hospital records or other documents that would indicate the presence of alcohol in the employee's system at the time of the accident.

Federal regulations place the burden of compliance with post-accident alcohol and controlled substance testing on the employee. Failure to release test results to the State shall be cause for discipline up to and including dismissal.

## **Reasonable Suspicion Testing**

Employees are required to take a drug and/or alcohol test(s) if there is reasonable suspicion that the employee is using or under the influence of alcohol and/or controlled substances without a prescription.

Reasonable suspicion testing may be based upon, among other things:

- 1) Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol;
- 2) Abnormal conduct or erratic behavior;
- 3) Arrest or conviction for a drug-related offense; or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
- 4) Information provided either by a credible source; or
- 5) Evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

Supervisors or management personnel who have reasonable suspicion, will take the following actions:

- 1) Keep the employee under direct observation until the situation is resolved;
- 2) The supervisor shall tell appropriate management personnel about his/her observations and discuss the circumstances and whether testing should be approved by the DER. If testing is approved, the employee will be immediately notified of the allegation and provided a brief explanation of the evidence giving rise to the allegation and an opportunity to respond prior to being required to submit a breath test and/or urinalysis;
- 3) Management personnel shall transport the employee to an appropriate collection site and thereafter will ensure that arrangements are made for the employee to be transported to the employee's residence or place of lodging. Under no circumstances shall an employee be permitted to drive a state vehicle or a personal vehicle to or from the collection site;
- 4) An employee will not be permitted to drive a state vehicle or return-to-duty until a negative test result has been received. An employee's leave will be unpaid, authorized leave unless the employee elects to use appropriate accrued leave time to cover his/her absence. If the test results are negative, the employee will be reimbursed for any lost wages due to the suspension;
- 5) Management will within 24 hours document in writing the particular facts related to the behavior or performance problems that led to the reasonable suspicion test and maintain this documentation in an appropriate file; and,
- 6) Disciplinary action shall be initiated for any employee with a verified positive test result.

## **Follow-up Testing**

Employees required to undergo a counseling or rehabilitation program for illegal drug use as a result of the drug testing program will be placed on a follow-up list where they will be subject to regular, unannounced testing for a period of one (1) year. Such employees will be tested as often as stipulated in the last chance agreement, or, in the alternative, at an increased frequency of six (6) times per year. Employees who complete an authorized drug treatment program who are returned to TDPs or CDL positions will, in addition to the follow-up testing, be returned to the random pools.

## **(Pre-testing) Voluntary Rehabilitation**

A safe harbor may be available to an employee who:

- a) voluntarily identifies him/herself as a former user of illegal drugs, prior to being identified through other means;
- b) has obtained counseling or is engaged in rehabilitation through an Employee Assistance Program (EAP) or Substance Abuse Professional (SAP); and
- c) is abstaining from the use of illegal drugs.

No disciplinary action shall be required for an employee who (1) voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means, (2) has obtained counseling or initiated a rehabilitation program through an employee assistance program (EAP) or substance abuse professional (SAP), and (3) thereafter refrained from using illegal drugs. This self-referral option allows any employee to have stepped forward and identify him/herself as a user of illegal drugs for the purpose of obtaining counseling or rehabilitation. Although this self-identification test may yield a verified positive test result, such test shall constitute merely an identification for purposes of this section. This provision shall not be available to an employee who has been provided notice to give a urine sample under this policy or who is found to have used illegal drugs through other means.

Admission to a rehabilitation program for substance abuse qualifies eligible employees for family-medical leave (FML). Employees requesting FML for absences related to such treatment must comply with the notice and eligibility requirements of that policy.

## **B. Testing Procedures**

### **Generally**

All testing will be performed by person(s) designated by the State. Employees and applicants will provide their samples without observation except when there is reason to believe a particular individual may alter or substitute the specimen provided. Reasons to believe a person may alter or substitute the specimen include, but are not limited to:

- 1) the test is conducted pursuant to reasonable suspicion;
- 2) the individual has previously been found to be an illegal drug user;
- 3) the individual has previously tampered with a sample or has the equipment or implements capable of tampering, altering, or substituting urine samples; or
- 4) the specimen temperature is out of range.

All testing required by 49 CFR Part 40 for employees required to hold CDLs will be conducted in accordance with those [requirements](#).

All other testing required by this policy shall be conducted in accordance with industry standards and in accordance with applicable federal and state laws. The [collection procedures](#) shall be designed to ensure the security and integrity of the specimen provided by each employee and those procedures shall follow federal chain-of-custody guidelines.

The Agency employing the employee will pay the cost of any drug and alcohol testing that it requires or requests employees submit to, including confirmation testing of positive results from an initial test. Any additional tests that the employee may request will be paid for by the employee.

Only a SAMHSA (Department of Health and Human Services) certified laboratory will be retained by the State to perform urinalysis for the detection of the presence of controlled substance(s). The laboratory will be required to maintain strict compliance with federally

approved chain-of-custody procedures, quality control, maintenance and scientific analytical methodologies.

Collection of urine samples must always be documented and sealed with a tamper proof sealing system in the presence of the employee who provided the sample to insure that all tests can be correctly traced to the employee.

An MRO shall be designated to receive all laboratory results from every type of test and assure that an individual who has tested positive has been afforded an opportunity to justify the test result as discussed below.

### **Opportunity to Justify a Positive Test Result**

When a confirmed positive result has been returned by the laboratory, the MRO shall perform the duties set forth in the HHS Guidelines. For example, the MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication.

Evidence to justify a positive result may include, but is not limited to:

- (1) a valid prescription.
- (2) an affidavit from the employee's physician verifying a valid prescription.

Individuals are not entitled, however, to present evidence to the MRO in a trial-type administrative proceeding, although the MRO has the discretion to accept evidence in any manner the MRO deems most efficient or necessary.

If the MRO determines there is no legitimate explanation for the positive result, such result will then be considered a verified positive test result. Consistent with confidentiality requirements the MRO shall refer written determinations regarding all verified positive test results to the appropriate DER.

### **Opportunity to Challenge a Test**

An employee who receives a positive test result on an initial alcohol breath test is required to take a confirmation validity test (second breathalyzer). If an employee provides medical documentation highlighting a health problem that prevents him from providing an adequate breath sample for an alcohol test, the potential discipline may be mitigated.

Within seventy-two (72) hours after an employee is notified of a positive, adulterated or substituted test result for a controlled substance, he/she may request that the "split" portion of his/her specimen be tested at a different SAMHSA laboratory. The MRO will arrange for all procedures to be performed in accordance with split specimen testing procedures. The cost of a split specimen test will be the responsibility of the employee; however, the test of the split specimen shall not be conditioned upon up-front payment. If the employee makes a request within seventy-two (72) hours to the MRO for the split portion to be tested, the MRO shall immediately arrange with the laboratory to initiate the process.

### **Dilute Specimen**

If a specimen temperature is out of range, a second collection is immediately required.



If an employee is unable to provide 45 ml of urine, the DOT “shy bladder” rule will apply. An employee will have up to 3 hours to provide the required 45 ml, and may consume up to 40 ounces of fluids during this time. An employee will be monitored during this waiting period and advised that s/he may have a medical evaluation at his/her own expense within five (5) days with a medical specialist with expertise in the appropriate bodily function. If, after 3 hours of waiting and no request for a medical evaluation, an employee is unable to provide 45 ml of urine, appropriate disciplinary action up to and including dismissal may result following a predeprivation meeting, if required.

If a positive test result is also identified by the MRO as dilute, that result is treated as a verified positive test which is cause for dismissal from employment. The employee may not be directed to take a second test.

If a negative test result is also identified by the MRO as dilute, an employee will be re-tested as soon as practicable with the minimum possible advance notice that s/he must go to the collection site. Management will provide instructions about the collection when the employee is informed about the dilute sample. The employee may have to travel to an approved collection site to submit the second sample. If the employee has to travel to an approved collection site, management will transport the employee. The results of the second test will be the test of record. If this result is also negative and dilute, then the test of record is negative for purposes of this policy and DOT regulations. No additional testing is allowed unless the MRO orders a recollection under direct observation. Refusal to take the second test is cause for dismissal from employment.

## **C. Disciplinary Consequences**

### **Verified Positive Test Results**

No applicant who receives a verified positive test result shall be extended an offer of employment. Agencies shall initiate action to discipline any employee who is found to use illegal drugs except that agencies are not required to initiate any disciplinary action against an employee who voluntarily identifies him/herself as a user of illegal drugs prior to being identified through other means, has obtained counseling or begun a rehabilitation program, and thereafter refrained from using illegal drugs. A positive testing result, evidencing illegal drug use is cause for dismissal. Agencies shall refer an employee found to use illegal drugs to an EAP. Such referral, however, does not preclude initiation of disciplinary proceedings.

### **Failure to Successfully Complete Counseling or Rehabilitation Plan**

Employees who fail to successfully comply with treatment plans may be subject to disciplinary action up to and including dismissal.

### **Test Results of Altered/Substituted Specimen**

No applicant who alters or substitutes a specimen shall be extended an offer of employment. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required and subject the employee to disciplinary action up to and including dismissal.

### **Failure to Appear for Testing**

No applicant who fails to appear for testing shall be extended an offer of employment.

Employees who fail to appear for testing without a pre-approved reason for the absence from the testing site may be subject to disciplinary action up to and including dismissal.

Employees who are absent during collection shall be tested upon their return to work if such return is before the next random selection. The DER shall contact the employee at the time of the new collection and provide the employee information about the test (e.g., collection form, location of collection site, etc.)

### **Refusal to Take a Drug or Alcohol Test When Required**

No applicant who refuses to be tested shall be extended an offer of employment.

Employees who refuse to be tested when so required will be subject to disciplinary action up to and including dismissal. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

Employees being tested must complete any required paperwork and empty their pockets and display the contents to the collector. Employees shall follow standard testing protocols as instructed by the collector(s). Failure to follow instructions will be considered a refusal to take a test when required and may result in disciplinary action up to and including dismissal.

### **Failure to Disclose (1) Medications with Warnings against Operating a Motor Vehicle or (2) Use/Influence of Alcohol**

An employee taking prescription(s) that carry a warning against operating a motor vehicle should inform his/her supervisor or human resources/personnel office immediately upon receiving an assignment requiring the operation of a motor vehicle. Non-CDL employees that are under the influence of alcohol and/or have consumed alcohol in the last four (4) hours must inform their supervisor when reporting to work. Failure to so notify shall be considered cause for disciplinary action up to and including dismissal. CDL employees may not report for work if they have consumed alcohol in the last four (4) hours.

## **D. Supervisory Training**

Training will be provided for supervisors to assist in identifying and addressing substance abuse by employees. Training may be accomplished through various means including contracting out to private organizations and in-house training courses. Supervisors over employees required to maintain CDLs must receive the training required by DOT regulations.

## **E. Employee Education**

Employees required to maintain CDLs must receive the training required by DOT regulations.

## **F. Administrative Procedures**

### **Determining Testing Designated Positions (TDP)**

Each Agency Head requiring pre-employment or random testing for employees must specify the criteria and procedures to be applied in designating positions for testing.

Among the factors to be considered are the extent to which the position:

- authorizes employees to carry firearms;
- requires regular contact with offenders;

- requires transportation of or decision-making with regard to the welfare of children or with regard to vulnerable adults who are committed to the care of the state;
- gives employees access to sensitive information related to homeland security or criminal justice activities;
- requires employees, as a condition of employment, to obtain a security clearance;
- requires employees to engage in homeland security or emergency response activities;
- requires employees to directly inspect products or services where the failure of such products or services may directly endanger the safety of the public;
- involves the prosecution of criminal cases; or
- includes access to a controlled substance.

If an employee believes his/her position has been wrongly classified as a testing designated position (TDP), that employee may file an administrative appeal, in writing within fifteen(15) days of the notification to the Agency Head setting forth all relevant information. The Agency Head shall review the appeal based upon the criteria applied in designating that employee's position as a TDP.

## Notices

Notice shall be provided to all employees:

- explaining the purpose of the Drug-Free Workplace Policy;
- stating that the Drug/Alcohol Testing Policy will include both voluntary and mandatory testing;
- stating that while the State will make efforts to keep the specific medical information related to results of drug and alcohol tests confidential, test results may be used in administrative proceedings, arbitrations, and court cases arising as a result of the employee's drug testing;

In addition, Notice shall be provided individually to those employees in testing designated positions:

- notifying specific employees that their position has been designated a "testing designated position;"
- describing the circumstances under which testing may occur;
- indicating that the confirmatory test is highly reliable and difficult to dispute;
- stating the consequences of both confirmed positive test results and refusal to be tested;
- indicating that an opportunity will be afforded to submit medical documentation of lawful use of an otherwise illegal drug;
- indicating that, before being identified for testing, an employee may voluntarily identify him/herself as a user of illegal drugs and initiate counseling or begin rehabilitation, in which case disciplinary action is not required;
- announcing that employees may seek counseling and rehabilitation and informing them of the procedures for obtaining such assistance through an employee assistance program.

Each employee in a testing designated position will be asked to acknowledge in writing that the employee has received and read the notice that the employee's position has been designated for random drug testing, and that refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal. Each notice will be signed by the employee and centrally collected for easy retrieval by the Agency Head.

If the employee refuses to sign the acknowledgement, the employee's supervisor shall note on the acknowledgement form that the employee received the notice. This

acknowledgement is advisory only. An employee's failure to sign the notice shall not preclude testing that employee or otherwise affect the implementation of testing.

### **Records and Confidentiality**

While the State will make efforts to keep the specific medical information related to drug and alcohol tests confidential, test results may be used in administrative proceedings, arbitrations, police investigations and proceedings, and court cases arising as a result of the employee's drug testing. If the employee is to be referred to a treatment facility for evaluation, the employee's test results will also be made available to the employee's counselor. The employee will be asked for consent before specific medical information is released to anyone other than those already mentioned.

All discussions between employees and MROs concerning legitimate explanation of positive test results are confidential unless the employee poses a safety risk, which requires the MRO to discuss the situation with the State. If medically supportable reasons exist to explain the positive result, the MRO will report the test result to the State as negative.

### **EAP Referral and Availability**

The State shall continue its sponsorship of an [EAP](#) which includes programs for referrals for substance abuse prevention and treatment and for the rehabilitation of employees with substance abuse problems.

<b>REFERENCES</b>
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Omnibus Transportation Act of 1991  
49 CFR Parts 40 and 382  
[25 IAC 4-1-1](#)  
Executive Order 90-5  
[Drug Free Workplace Policy](#)  
[Discipline Policy](#)

<b>ADDITIONAL INFORMATION &amp; FORMS</b>
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[Acknowledgement of Receipt of Policy](#)  
[Contact Information for the State's third party administrator of drug/alcohol testing](#)  
[Informational material related to the health effects and workplace issues caused by alcohol and certain specified drugs](#)  
[CDL forms](#)